

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION OF       )  
DELMARVA POWER & LIGHT COMPANY       )  
FOR REVIEW AND APPROVAL OF ITS       ) PSC DOCKET NO. 19-0110  
PROPOSAL TO CONSTRUCT A SATELLITE)  
NATURAL GAS FACILITY                       )  
(FILED FEBRUARY 22, 2019)               )

**ORDER NO. 9429**

**AND NOW**, this 16<sup>th</sup> day of July, 2019, the Delaware Public Service Commission (“Commission”) hereby decrees and orders as follows:

**WHEREAS**, on February 22, 2019, Delmarva Power & Light Company (“Delmarva” or the “Company”) filed a petition (“Petition”) seeking authority to construct and operate a satellite liquefied natural gas storage facility (the “LNG Facility”) in the southern region of its natural gas service territory, and seeking recovery of the LNG Facility construction and operation costs either through the Company’s annual Gas Cost Rate (“GCR”) Adjustment or the creation of a regulatory asset for the LNG Facility’s construction and operations costs until such time as Delmarva files its next natural gas base rate case; and

**WHEREAS**, in Order No. 9362 (April 2, 2019), the Commission opened this docket, designated a Hearing Examiner, directed notice of the Petition to be publicly noticed pursuant to statute, and established a deadline for interventions; and

**WHEREAS**, in Order No. 9362 the Commission also directed Delmarva not to enter into construction contracts for or order plant components related to the LNG Facility until such time as the Commission issued a final Order in this docket; and

**WHEREAS**, on April 30, 2019, the Delaware Division of the Public Advocate (“DPA”) and Commission Staff (“Staff”) filed a Joint Objection to the Petition, arguing that: (1) Delmarva

did not require Commission approval to construct and operate the LNG Facility; (2) Delmarva's proposal to temporarily recover the LNG Facility construction and operation costs through the GCR Adjustment was improper because the GCR only permits recovery of fuel costs, not plant costs; (3) Delmarva's tariff specifically excludes recovery of expenses associated with operating and maintaining LNG facilities; and (4) the Commission should reject Delmarva's request for regulatory asset treatment because the LNG Facility costs are not yet used and useful in providing utility service; the LNG Facility costs are similar to Construction Work in Progress, which the Commission has consistently excluded from rate base; and operation and maintenance costs are inappropriate for capitalization; and

**WHEREAS**, on May 30, 2019, Delmarva filed its response to the Joint Objection, arguing that: (1) there was "an established practice of seeking and obtaining Commission pre-investment approval for significant investments that would alter longstanding practice or, for other reasons, are of a nature that the Commission might wish to review and potentially approve before the investment is made ... .;" (2) the proposed recovery alternatives mitigate regulatory lag, which is a significant concern for the Company; (3) its proposed temporary recovery through the GCR is permissible; (4) its GCR tariff could be modified to permit the treatment Delmarva seeks; and (5) regulatory asset treatment was warranted for a number of reasons; and

**WHEREAS**, on June 10, 2019, the Hearing Examiner issued proposed findings and recommendations in which he recommended that the Commission: (1) grant summary judgment in favor of the DPA and Staff on the issue of recovery of the LNG Facility costs through the GCR Adjustment; (2) deny summary judgment to the DPA and Staff on the regulatory asset question, finding that the Commission has discretion to decide whether to create a regulatory asset; (3) vacate Ordering Paragraph 1 of Order No. 9362 prohibiting Delmarva from entering into

construction contracts or ordering plant components because Delmarva is free to begin constructing the LNG Facility if it believes it is appropriate; and (4) remand the docket to the Hearing Examiner for further proceedings consistent with his recommendations; and

**WHEREAS**, Delmarva, Staff and the DPA have conferred in an effort to resolve the matters raised in the Petition and the Joint Objection; and

**WHEREAS**, Delmarva, Staff and the DPA have entered into a Settlement Agreement resolving those matters; and

**WHEREAS**, the Commission has considered the Settlement Agreement at its regularly-scheduled meeting and deliberated in public session;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE  
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 *Del. C.* § 102A(4), we find that appropriate notice of our consideration of this matter at this July 16, 2019 meeting was given through its inclusion on the agenda for the July 16, 2019 meeting, which was published on the Commission's website and at the Commission's office on July 9, 2019. In reaching this decision, we have considered the nature of the proceeding, the number of persons affected and their interests in the proceeding, the ability of publication of the agenda to reach those affected, and the comparative costs of the alternative methods. The only intervenor in this case was Chesapeake Utilities Corporation, and we observe that Chesapeake did not take a position and did not file any pleadings addressing the DPA's and Staff's motion to dismiss the Petition or Delmarva's response thereto. Chesapeake monitors the Commission's proceedings and attends its regular meetings, so it clearly receives notice of the matters that the Commission will consider at its meetings and will have the opportunity to present its view on this Settlement Agreement should it have such a view. The other affected parties are parties to the Settlement Agreement and are already aware of when we will consider it.

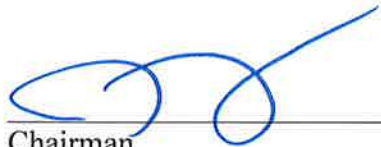
Furthermore, this is not a rate case or other type of proceeding in which the public would have a general interest and which would justify requiring the traditional 20 days' notice; rather, it involves a rather esoteric issue of public utility law. The public was notified of Delmarva's Petition and the opening of this docket through newspaper publication. Moreover, we are not reaching the merits of Delmarva's Petition in considering the Settlement Agreement. Whether we will ever have to consider the merits of a satellite LNG Facility will depend on (a) whether Delmarva chooses to construct it, and (b) if Delmarva does construct it, when Delmarva seeks to recover its costs.

2. The Commission finds that the Settlement Agreement is in the public interest and should be approved. The Settlement Agreement eliminates the need for further litigation of the legal issues raised by the Joint Objection and the response thereto, the costs of which would be borne by ratepayers should they fall within the test period in Delmarva's next rate case. Moreover, the parties are not prejudiced from taking any position raised herein in a subsequent case if Delmarva constructs the LNG Facility and, if it does, when it seeks to include the LNG Facility in plant in service. Only the matters that are specifically agreed to in the Settlement Agreement are binding on the parties.

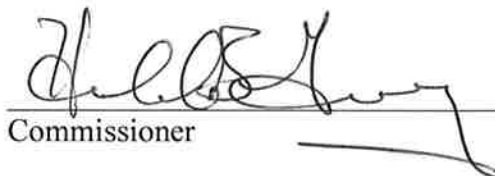
3. We vacate Ordering Paragraph 1 of Order No. 9362 dated April 2, 2019. Delmarva does not require our approval to construct the LNG Facility if it believes doing so is appropriate.

4. The Commission retains jurisdiction and authority to enter such further orders as are deemed necessary or appropriate.

**BY ORDER OF THE COMMISSION:**

  
Chairman

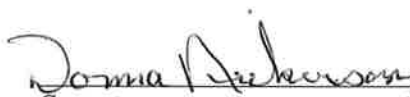
  
Commissioner

  
Commissioner

  
Commissioner

  
Commissioner

ATTEST:

  
Secretary



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IN THE MATTER OF THE PETITION OF       )  
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22, 2019)

PROPOSED SETTLEMENT

This 27<sup>th</sup> day of June 2019, Delmarva Power & Light Company (“Delmarva” or the “Company”), the Division of the Public Advocate (“DPA”), and the Delaware Public Service Commission Staff (“Staff”), all of whom together are the “Settling Parties,” each individually a “Settling Party,” hereby propose a settlement of all issues that were raised in the above-captioned proceedings as follows (the “Settlement”).

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On February 22, 2019, Delmarva filed a petition (“Petition”) with the Delaware Public Service Commission (the “Commission”) seeking authority to construct and operate a satellite liquefied natural gas storage facility (the “LNG Facility”) in the southern region of its natural gas service territory (the “Petition”). The Petition was accompanied by the pre-filed direct testimony of three witnesses.

By PSC Order No. 9362, dated April 2, 2019, the Commission required notice of Delmarva’s Petition through newspaper publication, established a deadline for interventions, and assigned the matter to Hearing Examiner Glenn Kenton for evidentiary hearings and further proceedings. The Commission also ordered that Delmarva would not enter into construction contracts or order plant components related to the Petition until such

time as a final Order in this docket was issued.

The DPA exercised its statutory right of intervention. Hearing Examiner Kenton granted admission to Chesapeake Utilities Corporation (“Chesapeake”) as an intervenor in this matter.

The Settling Parties engaged in discovery. On April 30, 2019, DPA and Staff filed a Joint Objection to the Petition. On May 30, 2019, Delmarva filed its Response to the Joint Objection. On June 10, 2019 the Hearing Examiner issued Proposed Findings and Recommendations.

It is acknowledged that the Settling Parties hold differing views as to the proper resolution of many of the underlying issues in this proceeding and are preserving their rights to raise those issues in future proceedings on a prospective basis only, except as provided below. This Settlement reflects compromises made by the Settling Parties in an effort to resolve this proceeding.

## II. SETTLEMENT PROVISIONS

IT IS HEREBY STIPULATED AND AGREED by the Settling Parties that they will submit to the Commission for its approval the following terms and conditions for resolution of this proceeding:

### A. Settlement Terms

1. The Settling Parties agree that pre-approval of the Public Service Commission is not required for Delmarva to construct and operate the LNG Facility. Accordingly, the Settling Parties agree that they will jointly request the Commission to vacate Ordering Paragraph 1 of Order No. 9362 prohibiting Delmarva from entering into construction contracts or ordering plan components related to the Petition.

2. Delmarva agrees to withdraw its request to recover the costs of the LNG Facility through its Gas Cost Rates. Delmarva also agrees to withdraw its request to record the costs of the LNG Facility in a regulatory asset.

3. The Settling Parties agree that in the first gas base rate case in which Delmarva requests recovery of the LNG Facility to begin, recovery of the LNG Facility and associated accumulated deferred income tax (ADIT) will receive year-end rate base treatment in terms of its overall revenue requirement, provided the LNG Facility is used and useful before the end of the test period; or, if the LNG Facility is included as a post-test period ratemaking adjustment, is used and useful prior to the hearing dates in the base rate case. A full year of depreciation expense on the LNG Facility will also be allowed in the base rate case.

4. The Settling Parties agree that the reasonableness and amount of the LNG Facility to be included in plant in service shall be subject to review and challenge by any other party in the gas rate case.

#### B. Miscellaneous Provisions

5. The provisions of this Settlement are not severable.

6. The Settling Parties agree that they will submit this Proposed Settlement to the Commission: (1) requesting the Commission to vacate Ordering Paragraph 1 of Order No. 9362; and (2) requesting a determination that the Proposed Settlement is in the public interest. No Settling Party will oppose such Commission action. In the event this Settlement is not approved in its entirety by the Commission, then this Settlement shall be deemed an offer of compromise pursuant to Uniform Rule of Evidence 408, and no Settling Party's agreement to the terms of this Settlement shall prohibit or prejudice such Settling

Party from taking any position before the Hearing Examiner and/or the Commission concerning the pending docket. The Settling Parties further agree that this Settlement is expressly conditioned upon Commission approval of this Settlement without the need for a fully litigated evidentiary hearing and that only if this Settlement is rejected will a fully litigated evidentiary hearing on the merits be subsequently held.

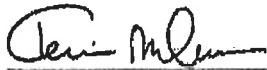
7. This Settlement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Settlement shall be implemented and become enforceable notwithstanding the pendency of a legal challenge to the Commission's approval of this Settlement or to actions taken by another regulatory agency or court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a court having jurisdiction over the matter.

8. This Settlement is the product of extensive negotiations and reflects a mutual balancing of various issues and positions. This Settlement represents a compromise for the purposes of settlement and shall not be regarded as a precedent with respect to any issue in any future case. No Settling Party necessarily agrees or disagrees with the treatment of any particular item, any procedure followed, or the resolution of any particular issue in agreeing to this Settlement, other than as specified herein.

9. To the extent opinions or views were expressed or issues were raised at any point in these proceedings, whether as part of a document filed or otherwise, that are not specifically addressed in this Settlement, no findings, recommendations, or positions with respect to such opinions, views, or issues should be implied or inferred.

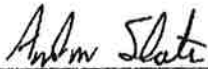
10. This Settlement may be executed in counterparts.

IN WITNESS WHEREOF, intending to bind themselves and their successors and assigns, the undersigned Settling Parties have caused this Settlement to be signed by their duly-authorized representatives.



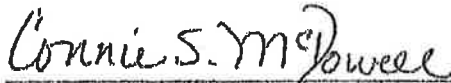
Delmarva Power & Light Company

Date: 6/27/19



Division of the Public Advocate

Date: 6/27/19



Delaware Public Service Commission Staff

Date: 6/27/19